

AMENDED IN ASSEMBLY MARCH 25, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2727

Introduced by Assembly Member La Malfa

February 22, 2008

An act to add Section 524 to the Evidence Code, and to add Part 10.1 (commencing with Section 15706) to Division 3 of Title 2 of the Government Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2727, as amended, La Malfa. Taxation: ~~state agencies~~ *State Board of Equalization: Franchise Tax Board*: burden of proof.

Existing law imposes various taxes that are administered and collected by ~~various state agencies~~ *the State Board of Equalization and the Franchise Tax Board*. Existing law ~~also~~ provides that *the taxpayer has* the burden of proof, ~~for specified issues in court proceedings for purposes of those tax laws, rests with the taxpayer a refund of tax, while the state agency has the burden of proof with respect to its assertion of fraud or intent to evade penalties.~~

This bill would provide, for purposes of the taxes and fees administered by the State Board of Equalization, that the board shall have the burden of proof, by clear and convincing evidence, in sustaining its assertion of penalties for intent to evade or fraud, ~~as provided, in any a civil proceeding, other than a criminal proceeding, with respect to a factual or legal issue related to ascertaining the tax liability of a taxpayer.~~

This bill would also provide, *with specified exceptions*, that ~~any state agency that collects and administers taxes~~ *the State Board of Equalization and the Franchise Tax Board* shall have the burden of

proof in ~~any~~ a court or administrative tax proceeding, ~~or in any evaluation of tax compliance conducted by a state agency~~ with respect to any factual issue relevant to ascertaining the tax liability of a *taxpayer who has established that it is a cooperating taxpayer*.

This bill would also provide that its provisions shall not subject a taxpayer to unreasonable search or access to records in violation of the law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 524 is added to the Evidence Code, to
2 read:

3 524. (a) Notwithstanding any other provision of law, in ~~any~~
4 ~~a civil proceeding, in proceeding to which the State Board of~~
5 Equalization is a party, that board shall have the burden of proof
6 by clear and convincing evidence in sustaining its assertion of
7 ~~penalties~~ a penalty for intent to evade or fraud against a taxpayer
8 or feepayer, with respect to any factual ~~or legal~~ issue relevant to
9 ascertaining the liability of a taxpayer.

10 (b) Nothing in this section shall be construed to override any
11 requirement to substantiate any item on ~~any tax return~~ a return or
12 claim filed with the State Board of Equalization.

13 ~~(c) This section shall not apply to any criminal proceedings.~~

14 ~~(d)~~

15 (c) Nothing in this section shall subject a taxpayer to
16 unreasonable search or access to records in violation of the United
17 States Constitution, the California Constitution, or any other law.

18 SEC. 2. Part 10.1 (commencing with Section 15706) is added
19 to Division 3 of Title 2 of the Government Code, to read:

20

21 PART 10.1. BURDEN OF PROOF

22

23 15706. (a) ~~A state agency that collects and administers taxes~~
24 *The State Board of Equalization and Franchise Tax Board* shall
25 have the burden of proof in any court or administrative tax
26 proceeding ~~or any evaluation of tax compliance conducted by~~
27 ~~employees, contractors, or agents of the state agency~~, with respect

1 to a factual issue related to ascertaining the tax liability of a
2 *taxpayer that has established that it is a cooperating taxpayer.*

3 (b) For purposes of this section:

4 (1) “Administrative tax proceeding” means ~~any~~ *either* of the
5 following:

6 (A) For disputes concerning taxes *or fees* collected by the State
7 Board of Equalization, the *oral* hearing before the members of the
8 State Board of Equalization.

9 (B) For disputes concerning taxes collected by the Franchise
10 Tax Board, the *oral* hearing before the members of the State Board
11 of Equalization.

12 ~~(C) For disputes concerning taxes collected by the Employment~~
13 ~~Development Department, the hearing before the Unemployment~~
14 ~~Insurance Appeals Board.~~

15 (2) “Cooperating taxpayer” means a taxpayer ~~who~~ *that* satisfies
16 all of the following requirements:

17 (A) Has complied with all relevant statutory, regulatory, or case
18 law substantiation requirements to substantiate any item on ~~any~~
19 ~~tax return filed with a state agency.~~ *a return or claim filed with*
20 *the State Board of Equalization or the Franchise Tax Board.*

21 (B) Has maintained all records as required by the Revenue and
22 Taxation Code, or any ~~rules or regulations issued by a state agency~~
23 *regulations issued by the State Board of Equalization or the*
24 *Franchise Tax Board*, and, upon a reasonable request by the state
25 agency, has provided those records to the state agency.

26 (C) Has provided credible evidence to the ~~state agency~~ *State*
27 *Board of Equalization or the Franchise Tax Board* with respect
28 to any factual issue relevant to ascertaining the tax liability of the
29 taxpayer.

30 ~~(3) “State agency” means the Franchise Tax Board, the State~~
31 ~~Board of Equalization, or the Employment Development~~
32 ~~Department.~~

33 ~~(4) “Tax liability” means any tax assessed by a state agency;~~

34 (3) “Tax liability” means *any tax or fee assessed or determined*
35 *by the State Board of Equalization or the Franchise Tax Board,*
36 including any interest ~~charge~~ *accrued* or penalties levied in
37 association with the tax *or fee*.

38 (c) Unless provided otherwise, the burden of proof ~~upon state~~
39 ~~agencies~~ for purposes of this part shall be a preponderance of the
40 evidence.

- 1 (d) This section does not apply to ~~an~~ *either of the following*:
- 2 (1) An adjustment proposed and made to a taxpayer's federal
- 3 income tax return by the federal government.
- 4 (2) *An appeal filed under Section 19045 or 19324 of the Revenue*
- 5 *and Taxation Code that is subject to the provisions of Section*
- 6 *21024 of the Revenue and Taxation Code.*
- 7 (e) Nothing in this section shall subject a taxpayer to
- 8 unreasonable search or access to records in violation of the United
- 9 States Constitution, the California Constitution, or any other law.
- 10 (f) This section shall apply only to court and administrative tax
- 11 proceedings involving ~~determinations~~ *assessments or notices of*
- 12 *determination* issued on or after the date on which this act becomes
- 13 operative.